

REMARKS

The present Amendment is in response to the Office Action mailed September 11, 2007. Claims 1, 7, and 8 have been amended. Claims 2 and 4 have been previously cancelled. Therefore, claims 1, 3, and 5-18 remain currently pending in the present application. Because of the finality of the Action, the present case is being submitted with a Request for Continued Examination. As such, the finality of the Action should be withdrawn. Applicants' remarks relating to the currently pending claims and the outstanding Action are set forth below.

In the Action, the Examiner rejected claims 1, 3, and 5-18 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,113,637 to Gill et al. ("Gill") in view of U.S. Patent No. 6,139,550 to Michelson ("Michelson"). In short, it is the Examiner's position that the combination of Gill and Michelson renders each and every claim pending in the application obvious, in that Gill discloses the claimed invention except for the concave shape and flexibility of the head in the retaining device, which the Examiner believes is taught by Michelson. Certain of the currently pending claims have been amended above, and Applicants respectfully submit that the currently pending claims are not obvious in view of Gill and Michelson.

The Examiner stated in the action that Gill teaches each of the limitations of the pending claims except for the concave shape and flexibility of the head of the retaining device. The Examiner cites Michelson as teaching these limitations. However, Michelson teaches a locking element having a head that employs cutouts (elements 22 of FIGS. 10, 11, and 21) or slits (elements 42 of FIGS. 16 and 17) for providing flexibility to its head. In fact, each embodiment of Michelson includes a plurality of cutouts or slits as modifications to the perimeter of the head. In col. 14, lines 54-66, Michelson

states that "[i]n FIG. 21, each segment 49 on each side of cutouts 22 of the locking element 21 has a bearing surface 48 formed at the lower surface of locking element head 23." Michelson goes on to state in lines 62-66, in referring to similar embodiments in FIGS. 6 and 10-13, that "when the locking elements 20, 21 are rotated . . . a respective bearing surface 48 will ride upon the curved top surface 39 of a respective bone screw head 32" According to this disclosure, the head 23 in Michelson employs slits 42 or cutouts 22 so that each individual "segment" of the element head 23 can operate independently of one another. In fact, FIGS. 16 and 21 of Michelson label each segment with its own element number (49). In contrast, the head in the present invention employs a continuous perimeter with at least one stress relief area located wholly within the perimeter.

Paragraph [0089] of the present application states that "[u]pon tightening of retaining devices 1900a, 1900b in this manner, rim portions 1930a, 1930b thereof cover at least a portion of a respective one of the bone screw heads" Paragraph [0089] further states that "each of the head flanges 1920a, 1920b has a thickness dimension 1940a, 1940b and/or a configuration of stress relief areas 1960a, 1960b . . . that allows it [the head flange] to flex toward a flatter state" This evidences the fact that the head flange of the present invention acts as a whole, rather than as sections thereof as taught by Michelson. Michelson simply does not teach a configuration where the cutouts or slits are placed within the perimeter of the head. The embodiments shown in Michelson in FIGS. 10, 11, 16, and 17 do each include a noncircular recess 24 (Applicants believe that the noncircular recess in Fig. 11 is labeled incorrectly as 27). This noncircular recess is the only recess located within the perimeter of any embodiment in Michelson, which recites in col. 16, lines 55-58 that "each

locking element 20, 21 is provided at its center with a noncircular recess 24 . . . which is engageable by an appropriate manipulation tool" The purpose of the noncircular recess in Michelson is not for flexibility, but rather for manipulation of the locking element itself. Therefore, Michelson does not disclose the use of a head including at least one stress relief area which does not abut or overlap the perimeter of the head, but rather is positioned wholly within the perimeter of the head as is claimed in the present invention. The structural differences of the present invention distinguish it over Michelson in this respect, and Applicants respectfully submit that the rejection in view of Michelson is overcome.

The Examiner stated in the Action that it would have been obvious to have provided any desired number or configuration of stress reliefs (i.e. slots) taught in Michelson in the design of Gill, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Applicants respectfully disagree and note that the present invention is not taught by the combination of Michelson and Gill because even that combination fails to teach all of the limitations of the above claims.

Independent claims 1 and 8 have been amended herein to more specifically claim the invention which is discussed above. Applicants, therefore, submit that independent claims 1 and 8 more clearly distinguish the present invention over the prior art of record, as each and every limitation of independent claims 1 or 8 is not taught by Gill, Michelson, or a combination thereof. Further to that matter, the Examiner's statement in the Action that the limitations in method claims 14-18 have not been given patentable weight since they do not affect the actual steps of the method in a manipulative sense is now moot as Applicants submit that currently amended independent claim 8 is

in condition for allowance. Given that claims 14-18 properly depend from independent claim 8, such claims are necessarily allowable. The amendments of independent claims 1 and 8 and dependent claim 7 are fully supported in both the originally filed FIGS. 19a-19c, as well as in the originally filed disclosure of the present application (See paragraph [0089]).

In light of all of the above, Applicants respectfully submit that independent claims 1 and 8 are in condition for allowance. Given that claims 3, 5-7, and 9-18 properly depend from one of independent claim 1 or independent claim 8, such claims also necessarily overcome the prior art cited by the Examiner. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Therefore, Applicants respectfully request allowance of each and every one of current claims 1, 3, and 5-18.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/782,131

Docket No.: SPINE 3.0-455 CIP CIP

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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